

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

JOHN J. LYNCH,

Plaintiff,

v.

EVELYN RIVERA, et al.

Defendants.

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CIVIL ACTION  
No: 2:16-cv-5493-LDD

**ORDER**

AND NOW, this                      day of                      , 2017, upon  
consideration of the Appeal of denial of In Forma Pauperis and briefs in support and opposition,  
it is hereby ORDERED and DECREED that the Appeal is DISMISSED for lack of jurisdiction.

BY THE COURT:

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United States District Court Judge

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Plaintiff,	:	CIVIL ACTION
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	:	
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	:	
Defendants.	:	

**APPELLEE EVELYN RIVERA'S BRIEF IN OPPOSITION**

Evelyn Rivera, by and through her attorney, Jennifer Schultz, Esq., respectfully responds to the present appeal and submits this brief in opposition to the appeal.

**I. INTRODUCTION**

Appellant John J. Lynch seeks to have the bankruptcy court's denial of his Petition to Proceed In Forma Pauperis overruled, and seeks permission to proceed In Forma Pauperis in the adversary in the bankruptcy court. The Court lacks jurisdiction to hear the present appeal because Mr. Lynch's appeal was filed untimely.

**II. FACTUAL AND PROCEDURAL BACKGROUND**

On September 7, 2016, Evelyn Rivera filed a voluntary petition for relief under Chapter 7 of Title 11 of the United States Code. Appellant, John J. Lynch, was listed as a judgment creditor as a result of a default judgment in the Philadelphia Court of Common Pleas, Lynch v. Rivera, No. 150304249, entered October 19, 2015. On September 12, 2016, *pro se* litigant John J. Lynch filed an adversary complaint citing Federal Rules of Bankruptcy Procedure §§7001(2)(3)(4)(6) & (9). He simultaneously filed a Petition to Proceed In Forma Pauperis. On September 26, 2016, the Bankruptcy Court signed an order denying the Petition to Proceed In Forma Pauperis. The Order was entered on the docket on September 27, 2016. On October

14, 2016, Appellant filed Notice of Appeal with the Bankruptcy Clerk.

### III. ARGUMENT

Appellee takes no position on the lower court's decision on the merits. However, Appellant's appeal is untimely, and therefore, the Court lacks jurisdiction to review the matter.

"[N]otice of appeal must be filed with the bankruptcy clerk within 14 days after the entry of the judgment, order, or decree being appealed." Fed. R. Bankr. P. 8002(a)(1). Failure to file a timely appeal as required by Rule 8002 is a jurisdictional defect that deprives the district court of the ability to review the bankruptcy court's order. *In re Universal Minerals Inc.*, 755 F.2d 309, 310-312 (3d Cir. 1985) (citing *In re LBL Sports Center, Inc.*, 684 F.2d 410, 412 (6th Cir.1982); *Matter of Robinson* 640 F.2d 737, 738 (5th Cir.1981); *Matter of Ramsey, supra*, at 1222; *In re H. Daroff & Sons, Inc.*, 403 F.Supp. 234 (E.D.Pa.1981); *In re W.T. Grant Co.*, 425 F.Supp. 565, 567 (S.D.N.Y.1976), *aff'd mem. sub nom. Berger v. Rodman*, 559 F.2d 1202, 1206 (2d Cir.1977).).

In the present case, the Order was docketed on October 27. Therefore, the 14-day appeal deadline was November 10. However, the notice of appeal was not filed until October 14, 4 days after the deadline.

Appellee takes no position on the underlying request for grant or denial of IFP status. Insofar as Appellant's brief attempts to argue the substantive merits of his adversary proceeding, those matters are outside the scope of the present appeal and are not properly before the Court.

**IV. REQUESTED RELIEF**

For the foregoing reasons, the appeal should be dismissed.

Respectfully submitted:

Date February 3, 2017

/s/ Jennifer Schultz  
Jennifer Schultz, Esq.  
Attorney for Movant Evelyn Rivera  
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**CERTIFICATE OF SERVICE**

I, Jennifer Schultz, Esq., hereby certify that the foregoing Appellee Evelyn Rivera's Brief in Opposition and this Certificate of Service have been filed electronically and are available for viewing and downloading from the ECF system, I further certify that the foregoing will be served upon the following parties, via first class mail on 2/4/2017:

John J. Lynch  
3281 Red Lion Road, Apt. #1  
Philadelphia, PA 19114

John Lynch, #562783  
Philadelphia Department of Prisons  
Philadelphia, PA 19136

I further certify that the foregoing was served via electronic means upon the following:

Kevin McDonald  
Blank Rome LLP  
1 Logan Square  
Philadelphia, PA 19130

Thomas Puleo, Esq.  
KML Law Group, Inc.  
Mellon Independence Center, Suite 5000  
701 Market Street  
Philadelphia, PA 19106

Date February 3, 2017

/s/ Jennifer Schultz  
Jennifer Schultz, Esq.  
Attorney for Appellee Evelyn Rivera